

THE DECALOGUE JOURNAL

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Number 4

Society Opposes McClintock and Broyles Bills

On the recommendation of our Civic Affairs Committee, The Board of Managers of The Decalogue Society of Lawyers, directed that a communication embodying the Society's objections to pending legislation in the Illinois Assembly known as Subversive Activities Bills 92, 93, 96 and 98 and certain "Broyles Bills," Illinois Senate Bills 33, 34, 35, 36 and 102, be sent to all Illinois Representatives and Senators from Cook County and that our President, Carl B. Sussman, advise the Governor of our state of action taken. Sussman wrote:

March 7, 1951

Honorable Adlai E. Stevenson, Governor,
State of Illinois,
Springfield, Illinois.

Dear Governor Stevenson:

I have the honor of forwarding to you a copy of the communication and report which we have sent to the members of the Illinois General Assembly representing Cook County Senatorial Districts.

Should the McClintock and Broyles Bills receive a favorable vote, we hope that you will exercise your executive privilege of vetoing them. The Decalogue Society of Lawyers will deem it its duty to submit to you any additional information which you may require in support of such action. We shall regard it a privilege to hear from you and will appreciate an expression of your views in this matter.

Assuring you of our esteem, I am,

Respectfully yours,
CARL B. SUSSMAN
President

The Communication

The Decalogue Society of Lawyers, numbering 1600 members of the Illinois Bar and third largest bar association of this State, strongly opposes the passage of the "McClintock Bills," Illinois House Bills 92, 93, 96 and 98, and the "Broyles Bills," Illinois Senate Bills 33, 34, 35

and 36, and urges the General Assembly to reject the proposed legislation.

We are gravely concerned about the needs of our country to maintain national security in these times of severe international tension and uncertainty. As lawyers, we stand ready to serve our country and to cooperate in all measures necessary to preserve our nation. But we are convinced that these bills will add nothing to our nation's or state's security. On the contrary, we feel their passage would seriously impair the traditional liberties of our state's citizens, would greatly reduce the morale, efficiency and quality of our teachers and public servants, and would thereby give real aid to the very forces against which the bills are purportedly directed. We take this opportunity to state some of our reasons for opposing the bills.

H. B. 92, like S. B. 34, fails adequately to define "communist organization." For that reason we believe it is unconstitutional under the holding of such cases as *Feinglass v. Reinecke*, 48 F. Supp. 438 (Dist. Ct., Ill., 1942), *Illinois Liquor Control Comm. v. Chicago's Last Liquor Store, Inc.*, 403 Ill. 578, and the cases therein cited, and *Winters v. New York*, 333 U. S. 507 (1948). It also clearly violates Article 5, Section 25 of the Illinois Constitution, by attempting to require an additional "oath, declaration or test" for public officials. The measure is so loosely drawn, that we genuinely fear it could be used by any dominant administration of the state to intimidate and remove teachers for fair comment and criticism—or simply for voting—against the administration.

Representative McClintock's second bill,

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Tax Institute Huge Success

The following is a report by Harry A. Iseberg, Chairman of the Committee on Legal Education, of the proceedings of the Federal Tax Institute conducted by The Decalogue Society of Lawyers on January 27, before a capacity audience in the Court room of the Chief Justice of the Municipal Court. Iseberg states that the Committee is completing plans for an Institute on another subject, to be held in the near future.

The participants, members of the Society, and recognized specialists in the field of federal taxation, were Paul G. Annes, writer and lecturer, Maxwell Abbell, consultant to many educational and philanthropic institutions, Benjamin M. Becker, co-author of *Illinois Lawyer's Manual*, and Joseph M. Solon, former U. S. District Attorney in charge of the Tax Division in the Chicago office.

The morning sessions were addressed by Messrs. Annes and Abbell, who analyzed the principal provisions of the Internal Revenue Act of 1950, of special interest to the general practitioner.

Annes discussed the changes made by the I.R.C. of 1950 in the individual and corporate rates of income taxes; the provisions for payment of the tax by corporations in accelerated installments; and the changes in the time when returns and payments are due from trusts and estates.

The provisions of corporate liquidations during the year 1951 under Section 112 (b) (7) were considered, with particular attention drawn both to the situations where this provision can be profitably availed of and a warning as to the dangers of its indiscriminate use. The new provisions with reference to stock options were taken up at considerable length, in view of the increasing importance of the subject resulting from decisions in this field in recent years, prior to these relief provisions of the new statute.

In the area of capital gains and losses, the changes were pointed out with respect to the denial of capital asset status to copyrights and the like under Section 117 (j) as amended; this amendment not changing, however, the previous status of patents and inventions.

The final item of importance discussed by
(Continued on page 14)

DECALOGUE ISSUES

By CARL B. SUSSMAN, President

Excerpts from Address of Welcome at our Annual Dinner at the Palmer House, March 3rd, 1951, at which The Decalogue Award for 1950 was presented to Dr. Percy L. Julian:

... We live in uneasy times when values we hold dear and precious are threatened from without in a measure civilization has not known before. We, a free people, give constant testimony of our confidence and strength to defend a way of life and a system of government that made us, American citizens, outstanding among all nations on earth. And it is to celebrate the right to project our unity with the noble institutions of our country that The Decalogue Society of Lawyers rededicates itself tonight to a restatement of its principles and completeness with the American way of life.

* * *

... The world is in a turmoil. Dark forces are at work to nullify our tremendous gains in the orderly forms of government and there is an endeavor abroad to repeal in substance concepts of civilization we cherish in our own land. Science has made tremendous strides; its accomplishments have added dignity and stature to the human being and it has lifted crushing burdens from the brows of mankind. But that almost to no avail, for no permanent peace or security is yet in sight for the millions on all continents in the world. Is this, the Atomic Age, to go down in history as the beginning of another Dark Age? The challenge is urgent; the issues are clear!

* * *

We lawyers, members of a bar association, all descendants of immigrants who came here

a generation or two ago, Americans all, are beneficiaries of a heritage left us by the founders of this country. Violence and deadly strife, untold sacrifices in blood and tears were conditions precedent that had to be met and overcome to establish at last in all its glories this great Republic, this model democracy.

* * *

Mankind shares the shame for the unspeakable decade that saw incinerators reduce human beings to dust and ashes and the excesses of that era have placed a lien upon the conscience of humanity to the end that the outrage never reoccur. We believe that this assurance and covenant extend and unconditionally include all those with sorrow laden, black or white, all minority groups whom the lash of prejudice and discrimination reduce to second class citizenship.

* * *

... That security from the enemy beyond our border is unsure if there lurks in our midst a contempt for a just application of the blessings of our Constitution. We believe that as lawyers we need exercise our special skills, talents and learnings to defend the weak and to enlighten the confused.

* * *

We are proud to salute in the person of our choice for the Decalogue Award not only recognized achievement and proved merit but also a fellow American, the son of a people who have yet to wrest their complete recognition from our laws and institutions. In this we pledge them and all minorities our unstinted aid in our march towards the brotherhood of man and the fatherhood of God.

The Presentation — Roy I. Levinson

For the honor of presenting the Decalogue Award for 1950 to Dr. Percy L. Julian the Society called upon Roy I. Levinson, past President and a stalwart in the activities of our organization. The following are excerpts from Levinson's address:

His selection as the recipient of our Award of Merit for 1950 is an expression of our admiration and respect for more than fifteen million Americans, whom Dr. Percy Julian so worthily represents. Their loyalty and patriotism have profoundly impressed us and have served as an inspiration to free men everywhere.

* * *

In the life works of Dr. Julian will we not find answer to the eternal question: what of the future? Bright? Or dark? After a study of his profound philosophy why not look at the duty of us all, to one another, from the first stirring of civilization? What of the other man?

* * *

He is an apostle of construction, rather than of destruction. We feel keenly his strength and high purpose, the integrity and ability with which he grapples with a succession of difficult problems. He never spares himself, whatever the issue. We know the depth of character and sincerity which motivate his every thought and word. But whither goes the world?

* * *

Dr. Julian's experiments with the Soya bean has produced unlimited quantities of synthetic testosterone, (male hormones) which give older men the mental verve, the muscular vigor, the virility to carry on.

* * *

At the very time some scientists evolved the atom bomb, Dr. Julian, calm in the midst of life's frustrations and turmoil, worked indefatigably to save and prolong human life.

. . . The wrought iron must be melted and tortured in the crucible of fire and flame and then pounded into its beautiful and useful shape; are not those people who have been tortured by the fires of hate and bigotry, and tempered by the process, the worthiest of consideration and admiration?

* * *

We honor one who has dug deep into the hidden meanings and implications of the spiritual longings for light.

* * *

Prejudice and truth are enemies. Truth, in life as in the laboratory has no finer task than that which it duly performs—of destroying prejudice. Were I to distill Dr. Julian's philosophy from his life and works in one sentence, I would say that he has proved in the laboratory of life that where prejudice is—truth is excluded. For no judgment where given in advance of known truth is either sound or safe.

* * *

The Decalogue Society of Lawyers is honored to present to you—Dr. Julian—its Award of Merit for the year 1950 for your distinguished service to your country as patriot and scientist; for your outstanding creative achievements in the interest of the common good; for the boon and blessings your scientific learning and discoveries have bestowed upon man; for your unparalleled devotion to the needs of humanity, the cause of decency and the progress of free America.

. . . For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government.

JUSTICE HUGO L. BLACK:

Opinion in Smith vs. State of Texas, 1940

The Image of Our National Character

*An address By Dr. Percy L. Julian before
The Decalogue Society of Lawyers on the
occasion of the presentation to him of
the Decalogue Award of Merit for 1950,
Palmer House, March 3, 1951.*

Mr. Chairman; Friends of the Decalogue Society,
Distinguished Guests:

I would not be a realist at all if I failed to appreciate the inspiring and typical American flavor of this occasion. For my children I must honestly record that this testimonial transcends anything that has to do with the feeble efforts of their father to be a good American citizen; it is rather a part of the traditional and finest American spirit—that we are never too coldly critical in our appraisal, that we never set our standards of worth so high, that we cannot pause and extend our love, our generosity and our food to the spirit of the humble who need it, that their spirits may be rekindled and their faith deepened. And my children will remember the spiritual of their forefathers, "Let us cheer the Weary Traveler." I can only say with deep humility that I shall strive someday to be worthy of only a small part of your outpouring, and I thank you from the bottom of my heart for this symbol to my children of the ties that bind them to the hearts of their fellow-Americans.

You who have gathered together at this feast of love and human generosity represent the custodians of an image which hundreds of millions of people in this hour are attempting to bring into focus to discern clearly its real and basic outline. It is an image around which the ferments of an entire world are today seething. With mingling feelings of fear, of trembling, of yearning, of futility, of resignation, of despair, and of hope, the millions of surging humanity, standing upon the brink of a New Age, are seeking a view of this Image. For you are the custodians of the Image of our National Character! Honest recognition of this inescapable fact, with deep humility, involves at the same time an acceptance or a rejection of significant and history-making responsibilities. Whether we, as custodians of this image, can be entrusted and will be entrusted by the gracious God of Human Destiny to lead humanity with intelligent humility and understanding into the promised land of Beauty of which the prophets have prayed and the angels have sung—or whether mass hysteria, fed upon the love of confusion, which is the essence of satanic glee, shall make of the struggles of humanity nothing other than the Shakespearean cynicism that, "day by day we ripe and ripe, and day by day we rot and rot, and thereby hangs the tale"—this is the basic issue of civilization's conflict today. Is so-called human progress a delusion? Is human history to be considered as horses moving in a theatre but getting nowhere? The answer to these questions depends, to no little extent, upon the basic outline of the Image of our National Character, as that Image emerges into the focus of the gaze of the trembling children of this Earth.

No nation in world history ever had a more peculiar and strategic rendezvous with the gracious God of human destiny. A nation that has gathered itself by its own bootstraps from the sea-level of the jungle to the amazing elevation of unparalleled order, beauty and power; a nation that juts above the tableland of world morality as a massive peak; a nation that has dared to keep the flame of Freedom burning within the breast of the lowliest child of this earth; a nation whose tortuous struggles toward articulation of this freedom have involved it in a maze of paradoxes, but has nevertheless stolidly maintained its determination to replace uncertainty by certainty, vagueness by definiteness, and confusion by order; a nation that approaches its present historical rendezvous as a crown in the nobility of the ages! To such a nobility must its great debate in this historical hour address itself, and the greatest treason that its thinking citizenry could commit in this dark hour of uncertainty would be to approach its challenge with anything but unflinching honesty.

Sometime perhaps in the 30th century A.D. a world historian is going to write a chapter entitled "The Age of Approaching Honesty." A part of that chapter may be devoted to an apparently trivial portion of the American scene and may read as follows:

"And it came to pass that one day in this approaching millenium, a wise City Father listened with patience but with determination to the angry protests of a few of his assembled councilmen.

"Sir, you bring ruin upon our beloved city with your unrealistic policies. These enterprising men of wealth and holdings will bring millions to the coffers of our fair city if you will but let them do so; there will be jobs for thousands; parks and terraces of untold beauty shall blend with the matchless beauty of our metropolis; no city of our land may boast of more beautiful homes for its citizens. All they ask is that in making land available to them for this glorious crowning feat of free enterprise, you give them the freedom to reserve these institutions of beauty for those whom they consider bone of our bone and flesh of our flesh. Without this freedom, we fear they may take their capital elsewhere for investment."

And the City Father answered them, saying 'It is not freedom these men covet, it is license. The concept of freedom is too precious to every American to be subjected to such idle mockery. My message which you will take to your clients is clear and unequivocal. Tell them to take their money and go elsewhere, for I do no intend to preside over a city whose social citadels do not point always to the impregnable battlements of a City of God.'

And the remaining Councilmen stood up in one body of acclaim for their wise leader, and assemblies of freedom-loving men the world over burst forth in thunderous applause. Perhaps the Heavens smiled and the angels sang, for had not Glaucon said to Socrates ages ago: "Socrates, I do not believe that there is such a City of God anywhere on earth."

Socrates replied, "Whether such a city exists in heaven or ever will exist on earth, the wise man will live after the manner of that city, having nothing to do with any other, and in so looking upon it, will set his own house in order."

Now our most intimate concern is with the dream of this City of God in the evolution of the image of our National Character. It seems appropriate that we consider for a moment the peculiar identity of the roles which Science and the Law share in this evolution. These two, apparently distinct, and apparently unrelated intellectual disciplines have a remarkably similar operating base, for the cardinal essence of the approach of each of these disciplines at its best is the use of the human imagination. We speak here of imagination not in terms of the nostalgic and mystic beauty of Alice in Wonderland. We speak rather of imagination, as Walter Kerr has recently expressed it, as the power to construct images of Truth and Goodness that renders the Truth and concomitant Goodness more intense—that makes Truth and Goodness more identical with Reality in its broadest sense. The imagination of an Alice in Wonderland is not imagination at all; it is rather invention—"the invention of hypothetical states beyond and even contrary to any reality or any truth we have ever known." In the history both of our disciplines, the products of such invention have unfortunately posed as Truth and as Reality, and if, indeed, the image of our National Character is in this moment in any wise blurred, the confusion resulting from the substitution of invented pictures for reality itself, bears a large part of the blame. There is grave danger that the contagion of such a confusion will sap the vitality and robustness of our national character in a manner that will lead to disaster. Dr. Fred Hoskins told an intriguing story a few days ago, which aptly illustrates how prone is the human mind to accept invention as a substitute for reality and truth. A little boy was running along the street as fast as his feet would carry him and came upon a woman who stopped him, saying "Now, my lad, where do you think you are going in such haste?" "Why, I'm going to fetch a doctor for Granddaddy; he is very ill." "Oh, your Grandfather is not ill at all; he only thinks he's ill, and you just go back home and tell him so." Whereupon the lad did as he was told. A few days later he met the same woman again. "Oh, how is your Granddaddy, my young man?" "Oh, he's fine; he thinks he's dead and we're burying him on Saturday." Now, the imagination which we identify with the core and cardinal essence of these two disciplines to which you and I are devoted—Science and the Law—strives to keep before us a vitalizing and impelling picture of Ultimate Truth—yea, of Eternal Verity.

Now I am perfectly aware that the "down to bedrock," pragmatic intellect will object to the introduction of such resilience in what to him is a comfortably static discipline of conveniently fixed reference points. He will complain that only chaos can result from a confusion of the *isness* of the Law with its inevitable *oughtness*. And he will take pride in recalling for you the story of the student who allegedly cried out to Dean Pound, "But, Professor, that is not justice," whereupon the learned Dean is reputed to have replied, "My boy, we are teaching the Law; if you want Justice, go to the Divinity School." Most of us, of course, feel that Dean Pound was libeled by this story. Certainly, however, when nature devotees of

legal discipline are impressed by this reduction to absurdity it is a blot upon the high calling of your profession and another contribution to the blurring of the image of our National Character. For, if Justice is consistent with Truth in an ordered world, there can be in the long run no basic conflict between Justice and the Law.

If then, such is the essence of legal objectives, then the first and most sacred duty of the Judiciary, and its high calling, is to seek at all times the synonymy between the intent of the Law and an image of Eternal Verity. And beyond this comes the determination to expand the law so as to bring it into consonance with such an image. Enslavement to custom should then be considered a disease by an enlightened judiciary and should never thwart the emergence of the true imaginative force. A beloved man of the Chicago bench, in supporting the validity of restrictive covenants some years ago is known to have said "Though my decision runs directly counter to my personal convictions as a Christian and contrary to the basic concepts of our American democratic faith, I can make no other decision for such is the Law." Here on the part of a good man is a striking illustration of this disease of enslavement to custom of which I have spoken. As a nation we are beginning to feel the effects of this all-too-prevalent reluctance to apply the true imaginative force to our social problems, this reluctance to travel in the valley of the shadows beyond the calloused husk that hides the force of inevitable truth. And yet nothing is more imperative to us at this crisis in world history than that we accelerate this very process. Indeed the stern lessons of history teach us that nothing is more tragic than the reluctance of moral man to face the stark realism of cumulative truth. That Newton's revelations were like an earthquake to the foundations of the intellectual world of the 18th century is well-known history; it is equally well-known history, however, that Newton's victory was inevitable. For Newton had attempted the construction of an *image of cosmic order* in applying his laws of gravitation to the apparently "wayward movements of the shooting stars." The victory of the ordered over the wayward; the victory of reality over the apparent—just had to prevail. Likewise the struggles of Galileo with the Church over the truth or falsity of his heliocentric doctrine is an historical tragedy which none of us likes to recall.

Now what does all this have to do with the evolution of the image of our national character? To begin with, whether we will it or not, we have come to the point in world history where we are literally expected to be the torch-bearers of world morality. The image of our national character must be consistent with the dreams and aspirations of mankind down the ages for an ordered world. It matters not how comfortable may be the concept of our geographical position as that of an island arsenal; the stark truth is that we are just harnessed to the remainder of the world today, as the wayward planets of Newton were harnessed to one another by his universal laws of gravitation. The social forces of a dawning New Age are constituting a geocentric system as inevitable as the planetary system of the physical world. To assume anything to the contrary is sheer, nonsensical invention. And the Great Debate needs more than anything else the application of that genuine imaginative force that constitutes the essence of the disciplines of Science and the Law, the willingness to identify our

concepts of the future with the reality revealed by the cumulative lessons of human history.

Perhaps the most explosive paradox in world affairs today is the danger that the American nation may take an excursion away from the cumulative historical realism of the past few centuries, and thus inadvertently attempt to stop the clock of human progress. Paradoxical because for centuries the dominating force in the image of our national character has been a vigorous frontier motif—aggressive and progressive change—ceaseless, restless, disturbing change. The world has come to recognize these positive elements of our national character as healthy elements in social, economic and political progress. Now all of a sudden when the social forces of the world need badly a unifying or regulating concept, when the wayward movements of these social forces threaten the scheme of things to which we have become accustomed, we do not present a calm faith in the identity of our structure with history's long cherished aspirations. We develop instead an hysteria that spends much of its energies in "thought control" movements—in the feverish efforts to convince ourselves that we are all right just as we are. Few men in public life today dare a candid examination of these facets of hysteria that blur the image of our national character. We are jittery; we are frantic with fear, and we want no part of anything new. It is not a healthy, courageous, positive faith which we offer the world today; it is an uncertain and jittery negativism. Indeed some of us would go so far as to suggest that in the realm of interacting social forces, we have made all the discoveries; we are paragons of virtue—there are no more frontiers ahead of us.

To such a thesis no scientist can subscribe despite his pride in the historical greatness of our nation. Our present American tendency toward smug refuge in omniscience and a sense of physical power is the direst disease that ever set upon our spirits as a people. We cannot be reminded too often of the scientist of something more than a hundred years ago who voiced the opinion that all of the great fundamental discoveries of science had been made, that it only remained for future generations to polish them, refine them and adapt them to our practical needs. That man had reached the zenith of his capability for exploring the fundamental unknown.

Almost as if God, Himself, had been angered by such arrogant skepticism there descended upon this pronouncement an avalanche of the most glorious discoveries that have ever been credited to the human intellect. For shortly thereafter Michael Faraday "drew a living spark from the lifeless magnet." And Daniel, Grove and Bunsen, following close on the heels of Faraday's discovery gave us an enduring source of electrodynamic power. And Ohm in Germany taught us how to measure such a power when obtained. Yes, hardly had the ink dried upon this pronouncement when "Bessel detected the parallaxes of the fixed stars, and Adams and Leverrier threw their grapples out into space and felt the influence of unseen planets trembling along the delicate lines of their analyses." Draper, Daguerre and Talbot revealed the wonders of actinism and gave us the new science of photography. Yes, in another field, almost bordering on the aesthetic, Agassiz in Italy rode down the Alps upon the backs of the glaciers and proved their steady flow. And Darwin lifted the veil from the mysteries of organic development.

I like to think of Stokes as he stood one afternoon in the English countryside gazing at rainbow—and as he looked from the red to the violet end, he wondered what became of yonder violet as it faded into the invisible. And lo! Stokes with this dream had discovered for us the ultra-violet—beyond the violet—and blessed us unwittingly with Vitamin D, the sunshine vitamin, so that today our children need not grow up with the crooked bones of rickets. So that today we have thrust deep at the heart of arthritis or rheumatism. And so that today, they tell us, a hen that used to lay you 150 eggs a year now lays you 300 eggs a year because of DuPont's Delsterol. All because Stokes gazed at a rainbow and had the courage to dream of good things yet to come!

And in our own country Edison discovered that hot bodies give off electricity—fast moving electrons. And with this discovery he had written the first—even if relatively insignificant—chapter in the history of the atomic bomb. And when Roentgen in Germany read of Edison's discovery, he decided to place a piece of Tungsten metal in the path of these electrons. And when he did, he noticed new types of penetrating rays emitted from the Tungsten target. Behold! Roentgen had discovered for us the X-ray enabling our eye to see where hitherto we had not dreamed it would.

And when Becquerel in France read of Roentgen's discovery he decided to look at his Uranium from a new point of view. Yes, Becquerel's Uranium from the pitchblends of mountain Austria, known to man partly because a poor Russian, Mendeleef, had struggled through the University and out of the brilliance of his intellect, harnessed the wayward masses of the atoms into a system of periodicity, leaving a blank space which one day a metal, Uranium, was to occupy. And now Becquerel had it; he wrapped a photographic plate up in a piece of black paper and lay it near a piece of Uranium. And when he opened up the paper a short time later the photographic plate was as black as if it had been exposed to the direct rays of the sun. And Becquerel had written a second and very significant chapter in the history of the atomic bomb.

And when Pierre and Marie Curie read of Becquerel's discovery, they knew where to look for Radium and they went straight to that pitchblend from mountain Austria, and there they found it, and gave to humanity not only the first concrete remedy against the malady of cancer but to us a whole new science of rapidly moving particles charged with electricity—electrons, protons and alpha particles. And a third and most significant chapter had been written in the history of the atomic bomb.

And when Rutherford in England read of the Curies' work, he bombarded an atom of nitrogen with their alpha particles and converted the atom of nitrogen into an atom of hydrogen and an atom of oxygen. And Rutherford had written a fourth and vital chapter in the history of the atomic bomb!

When Marie Curie's daughter, Irene Curie, working with Joliot, learned of Rutherford's work, she reexamined the beloved Uranium of her mother and there she found something that her mother's eyes had not seen, that there were other fast moving particles emitted, not charged with electricity, not susceptible therefore to deflection in the electro-magnetic fields of Faraday and Daniel, Grove and Bunsen, but fast moving particles which went straight to their target.

And a fifth and crucial chapter had been written in the history of the atomic bomb! And these workers had brought us close to the basic building stones of our material existence and to an image of Reality.

This chronology of genius at work is but a striking illustration of history's summary rejection of any attempt to bottle up cumulative wisdom into a fixed and static formula of human behaviour. I have often recalled a story told by Harry Emerson Fosdick of a minister who went into his study and found his little daughter busily sketching something on paper. "Why, Anne, what are you drawing?", he asked. "Oh, Daddy, I'm drawing a picture of God!" "But, Anne, no one knows what God looks like." "Well, they will when I'm through."

We need gravely to ask ourselves whether we are tending toward a people with the mentality of Anne. Have we become so smugly satisfied with ourselves as we are that we reject any picture that we cannot reconcile with our man-sized God? Shall we allow the image of our national character to become identified with a devotion to half-truth? Shall we distort the image of our national character with a devotion to the mere husks and rinds of good?

And Socrates replied "Whether such a City of God exists in heaven or ever will exist on earth, the wise man will live after the manner of that city, having nothing to do with any other, and in so looking upon it, will set his own house in order." We cannot escape our historical destiny. Our house must be set in order that the image of our national character will be identified with the image of Order and Truth for which noble men have bled and died down the ages.

I would be faithless to my strongest convictions as an American citizen did I not tell you that the image of our national character is severely blurred for the rest of the civilized world by the miserable 18th and 19th century European-like Ghettos which choke the honor and human decency out of nearly every major metropolis of this nation. It is symptomatic of our smugness that we expect to weld Americans together in a unity of purpose, while we subject the spirits of fifteen millions of Americans to the horrors of a Dachau and Buchenwald psychology. In the sense of the Thracian maiden's evaluation of Thales of Miletus, some of us have been so busy studying the stars of freedom that we have literally fallen into the wells of spiritual degradation at our feet. We cannot hold the garment of God in our right hand and raise it to our lips while a left hand behind our back is clasped firmly in the grip of Satan, and expect a world of people to discern a coveted image of our national character. I warn my fellow citizens and I pray with them to recognize that no true patriotism can emanate from the American Ghetto. It has only served to create a house bitterly divided against itself, and though the house may stand, its strength and fibre are vitiated. Someday someone will write a dramatic story for the rest of the civilized world of the detailed horrors of the American Ghetto and the peculiar helplessness of its innocent victims. I say unto you now that the forces which have fought to maintain American Negro Ghettos must be destroyed. Foremost among these forces is that section of the real estate group which spreads the doctrine that if a Negro moves next to you, no matter who he is, the value of your property goes down. This insidious propaganda and, incidentally, this vicious lie, has ceased to carry

the flavor of privileged speech. It has become vile slander, incitement to arson, to murder, and to the wildest forms of mob violence. But for a half hour delay, by the grace of God, I would today be a mute victim of this propaganda. The time has come when federal and city statutes may well be necessary to insure citizens against first degree or premeditated murder by these members of the real estate clan. I have never witnessed a more subtly generated hysteria than that created daily in the mind of the American property owner by the so-called respectable real estate dealer. A few months ago one of my co-workers went with her husband to Elmhurst to look for a piece of property. Anxious to get the best for their youthful and sacrificial savings, they were told, as the first of their assets, by the real estate dealer "You need never have any fear of any Negroes living in Elmhurst!" One is prone to ask how long must decent Americans die in Korea and still be the subject of such slander?

It is not worthy of citizens of a great nation like this to make an already sorely harassed minority the scapegoat in vital issues that affect the image of our National Character. For example, the issue of Public vs. Private Housing has degenerated into unreasonable slander of the Negro minority. We cannot in this city apparently meet squarely and honestly the issue as to whether public housing is consistent with the spirit of our free enterprise system and our American desire for beauty in our cities, simply because demagogues insist upon keeping before the public the invention that public housing is designed primarily for the Negro population. The truth is that facts belie this contention. Between the years of 1941 and 1946, Negroes added \$60,000,000 in homes to their holdings. At the present moment, Negroes are buying homes in Chicago at the rate of \$36,000,000 a year. Of the estimated 112,500 Negro families in Chicago and suburbs, 22,500 families own their own homes valued at close to 400,000,000 dollars. Thus, given the opportunity, he is as much an adherent to free enterprise as any American citizen. It is almost inconceivable that a great people like ourselves should allow such a discussion to degrade into spurious logical sequences such as "You are for some public housing, eh?" "Then you are against free enterprise!" "Then you are for the Negro!" "Then you are for the destruction of white neighborhoods!" "Then you are a Communist."

It is to the great credit of our Mayor that he is reputed to have stated last year in the fever of this hysteria, "There is no such thing as a white neighborhood in the city of Chicago." Many of us hope the Mayor will repeat that statement. It is a good American statement and if the image of our national character is to be a revitalizing force in the world, it is a patriotic statement. We certainly cannot weld together a nation of one people by reminding 15 million Americans constantly of "white neighborhoods" any more than by asking them to die for a "white country." Such behaviour is unworthy of the nobility of our nation and blurs the image of our national character.

And speaking of dying in Korea, let me quote you from a recent segment of the American Negro Press. "Meanwhile, a news story broke which was given scant editorial attention in the daily press, but was a matter of considerable concern in the Negro Press: South Koreans were being integrated into white units of the American Army. Robert

Bennyhoff, U. P. correspondent wrote; "They are being incorporated into American platoons and squads on an equal basis with American soldiers. The Koreans wear American uniforms, live and eat with the G.I.'s and get the same treatment." The order came from MacArthur: it was, according to the General, "in keeping with the true concept of a United Nations Army." Meanwhile the 24th Infantry Regiment was listening to the following words from its commander, "You people have a history of running from battle. You ran in the 92nd in the last war. Now you are the frightened 24th Infantry Regiment. I intend to change that to the fighting 24th." And the 24th remains a Jim Crow outfit while the Pittsburgh Courier writes to 15 million Negro Americans "This is an insult which burns deep into the soul of every black American."

Whether all of this represents moral indifference, ignorance or downright moral turpitude, we who are gathered here this evening must, of necessity, be determined to erase these elements of disgrace from our National Character. The image of that character must stand unblemished as a beacon light of hope to a confused world. It has been too hard-earned, and is too precious to be tampered with. I fervently hope, that I may record for my children that you have done me this great honor this evening because we share in common these concepts of the sacred missions of our respective disciplines; that the ideals implied in those concepts are those by which we are determined to live and for the defense of which we would gladly die. And that you, my friends, one and all, may go forth as apostles of this coveted image of our national character, and that we are assembled here to pray that this image may blossom forth in a "New Birth of Freedom," a new unity of purpose, a new dauntless Faith, so that the peoples of this Earth may see that we have no fear, for that which we seek is the Kingdom of God!

Board of Managers Elects Nominating Committee

In keeping with the Constitution and By-Laws of The Decalogue Society of Lawyers, our Board of Managers elected Monday, March 26, fifteen members to serve on the Nominating Committee. It will be the duty of this Committee to propose a slate for officers of the Society and members of the Board. These will be formally elected at our annual meeting on May 25.

The following were elected to the Nominating Committee: Samuel Allen, Paul G. Annes, Samuel L. Antonow, Archie H. Cohen, Harry D. Cohen, Jack E. Dwork, Elmer Gertz, Alex M. Golman, Harry A. Isenberg, Roy I. Levinson, Oscar M. Nudelman, Eva R. Pollack, Morton Schaeffer, Carl B. Sussman, and Benjamin Weintraub.

President Sussman states that details regarding the program for May 25, will be announced later.

JOSEPH L. NELLIS TO SPEAK APRIL 27

The Forum Committee, Bernard H. Sokol, Chairman, announces that member Joseph L. Nellis, Associate Counsel, Kefauver Investigation Committee, will address The Decalogue Society of Lawyers, Friday noon, April 27, in the Grand Ballroom, Covenant Club, Chicago.

The subject of Mr. Nellis' talk will be "The Kefauver Committee From the Inside Out." Our guest speaker was formerly Associate Counsel, O.P.A.

The following Friday, May 4th at the Covenant Club, Bernard H. Sokol, former Assistant United States District Attorney, will speak on "The Kefauver Committee From the Outside In."

Guests are invited to both Forum meetings.

GROUP LIBEL

A 1917 Illinois statute never before tested in Court was upheld recently by the Illinois Supreme Court (317-19) and thus helped set an important precedent in civil rights and group libel law. The distinction of "discovering" this statute and proving its applicability in a criminal libel case belongs to member Albert I. Zemel, Assistant State's Attorney, Cook County. The statute makes it a misdemeanor "to publish material which portrays depravity, criminality, unchastity and lack of virtue among any group of persons." (Revised Statutes of Illinois, Chapter 38, Paragraph 471).

The case came up before the Illinois Supreme Court on an appeal from a conviction of one Joseph Beauharnais by a Municipal Court jury, in Chicago. The defendant, head of the racist White Circle League attacked, in a publication of his organization, the negro race, describing its members as "subhuman" and imputing to them criminal traits and characteristics.

The Court upheld Zemel's contention that the case involved no attack on the rights of free speech or free press but was a matter of criminal libel only.

A petition for a rehearing filed by the attorneys for the defense is now before the Illinois Supreme Court. —Editor

Dividends or Interest?

By MAX A. REINSTEIN

Member Max A. Reinstein specializes in Federal taxation matters. He has contributed to law review journals.

With the advent of the new 1950 Excess Profits Tax Law, an incentive has been added for the incorporating of new businesses "thin." "Thin" incorporation is not new to the field of tax minimization, "Thin" when used in this sense, means that instead of introducing money into the corporate organization by way of stock purchases, the investor lends money to the corporation.

The advantages accruing from this form of capitalization heretofore have been; first, the corporation has been enabled to take an interest deduction as opposed to a distribution of surplus by way of dividends. Needless to say, that while the recipient of interest is in no better position taxwise than the recipient of a dividend, there is a decided advantage to the corporation in that it may deduct the interest as an expense. This would not be possible by way of the dividend distribution. Secondly, should the corporate venture become insolvent and fail, stock would be treated as though it were sold or exchanged on the last day of the taxable year in which it became worthless. Usually this would subject the investment to the capital loss limitations and cause it to be taken into account as long term subject to the 50% limitation. In the case of an individual, the loss would be limited to being offset against capital gains, and if there were no gains then to \$1,000.00 or net income, whichever was lower. A bad debt, on the other hand, incurred in the taxpayer's trade or business, would be fully deductible, and if not so incurred, would be treated as a short term capital loss. In either event, it would certainly be more beneficial to the investor to have his investment considered a debt rather than a stock investment.

A third advantage would be the greater facility with which the investor could withdraw funds from the corporation. If his investment is tied up in stock, and he attempts to withdraw his funds by way of redemption, he

stands a good chance of having this distribution considered to be a dividend and, therefore, taxable, under Section 115(g) of the I. R. C.

The final advantage in the matter of "thin" incorporation would lie under the provisions of the Excess Profits Tax Law alluded to above. This advantage perhaps is best exemplified in the following hypothetical situation:

Corporation "A" has issued \$100,000.00 of stock on which it pays a 5% dividend, whereas Corporation "B" has issued \$100,000.00 of bonds on which it pays 5% interest. Since capital invested by way of stock is given a 12% credit under this law, it would save annually the 30% excess profits tax on 12% of the \$100,000.00 or \$3,600.00.

Corporation "B" would save the following annually:

- (a) The 47% income tax rate on the \$5,000.00 which it pays out in the form of interest \$2,350.00.
- (b) The excess profits tax rate of 30% on 25% of the interest paid (since only 25% of the interest thus paid is allowed for the credit), or 7½% of \$5,000.00 or \$375.00.
- (c) The excess profits tax credit granted for borrowed capital of 12% on \$75,000.00, (since only 75% of borrowed capital is taken into account) at the excess profits tax rate of 30%, or \$2,700.00.

Total tax saving under the borrowed capital method \$5,405.00.

Tax advantage by way of loan \$1,805.00.

While concededly these advantages are beneficial enough to warrant reorganization in the instance of old corporations and serious consideration in the instance of a contemplated or new corporations, the fact still remains that the courts have, in several of cases, vacillated, holding at one time that the investment was legitimate and valid indebtedness, and at other times that it was nothing more or less than stock. It thus becomes very important that the person entrusted with the responsibility of deciding these matters know where the approximate line of demarcation lies. So accordingly the balance of this article will be devoted to the treatment of the various factors which have in the past determined the issue one way or the other. No attempt will be made to state affirmatively just which factor is the most

important, for what is seemingly important in one case may in another case be deemed quite insignificant. It is, however, deemed expedient at this point to mention the fact that there has been an increasing tendency on the part of the Tax Court to question the proportion of debt to stock.

Stock Debt Ownership

Probably one of the most powerful determinatives has been the ownership of the stock in the same proportion as the ownership of the debt. This was rather forcibly demonstrated in the Supreme Court case of Kelley Company, et al. v. Commissioner, 326/US, 521, 46-1/USTC, 9133. In its decision the United States Supreme Court, because of the similarity of issues, combined the Kelley Company case with that of the Talbot Mills case. In both of these matters, there had been reorganizations wherein stock was exchanged for debentures. The distinction between the two cases and, in the writer's opinion, the basis upon which the difference in outcome was predicated, was the fact that in the Kelley case the debentures were sold to outsiders as well as to the former stockholders. In the Talbot case the distribution of the debentures was confined to the stockholders. In both cases the Tax Court was sustained to the effect that in the Kelley case the distributions were treated as interest, whereas in the Talbot Mills case they were treated as dividends.

Again, in the very recent case of Isidor Dobkin v. Commissioner, 15, T. C.—, CCH Dec. 17767, the ratio of loan to capital was 14 to 1, but the contribution of working capital by way of additional loans, maintained in the identical stockholding proportion, was sufficient to cause the court to consider all of the loans as "risk" or equity capital.

Maturity Dates

The next influencing factor is the matter of fixing the maturity date for the payments of principal or interest. In some instances, the Courts have gone on the theory that since the maturity dates of the "loans" were not fixed or were contingent, they were, therefore, to be treated as stock. For example, in Swoby Corporation v. Commissioner, 9 T.C., 887, the Court held that the so-called interest payments were dividends. The loan was callable, but due to the extreme length of its term, was not

collectible by the holder until dissolution, if at all. There, also, the payment of interest, both current and accumulated, depended not only on the available profits, but in reality on the decision of the directors not to create preferential reserves. In fact, this decision was comparable to declaring a dividend on preferred stock. However, in the case of Cleveland Adolph Mayer Realty Corporation v. Commissioner, 6 T.C., 730, where \$210,000.00 worth of 6% debentures and only \$600.00 worth of par value stock were issued in exchange for real estate valued in excess of \$300,000.00, the Court held that while there might have been a postponement of the maturity date, depending upon a lessee's exercise of its option to renew its lease, this of itself was not fatal and, therefore, the payments on the debentures were really interest.

In the 1432 Broadway Corporation v. Commissioner, 4 T.C., 1158, the Tax Court denied the interest deduction and in that case one factor which appears to have materially influenced the Court's decision, among others, was the fact that seventy-five percent of the debenture holders were required to join in the bringing of suit in the event of a default.

Subordination

Some courts, in appraising the validity of the debt structure, have given consideration to the subordination of the stockholders' loans to that of outside creditors. See 1432 Broadway Corporation, *supra*. However, the insertion of a subordination clause is perfectly compatible with genuine indebtedness. Commissioner v. O.P.P. Holding Corporation, 76 F (2d), 11; 35-1 USTC, 9179.

Tax Minimization

While the courts have repeatedly stated that taxpayers are free to choose the type of organization which best suits their purposes, they have also been prone to grant a choice of capitalization. In New England Lime Company v. Commissioner, 13 T.C., 799, a case in which the stock structure was reduced to the absolute minimum, the Commissioner argued that the balance sheets showed no capital invested in the stock of the petitioner and that the debt structure was excessive, so that the "debentures" in fact represented equity capital at the risk of the business. The Tax Court overruled

the Commissioner, holding that the stock did have some value and that the bonds were distributed widely and disproportionately. After enumerating several other factors which convinced the court of the validity of the debt structure, the Court went on to say, "The parties recognized that the shift would help the petitioner taxwise, but that is not sufficient reason for denying the deductions claimed."

General Considerations

Perhaps a case which runs the gamut in setting forth factors influencing the courts' decisions is *New England Lime Company v. Commissioner*, *supra*, wherein the following reasons for sustaining the interest deductions are enumerated:

1. The debentures were always called and recorded as debenture bonds requiring the payment of interest.
2. The debentures were unqualifiedly due and payable 25 years from their dates of issue.
3. A part of the interest was absolutely fixed, while the remainder was payable unqualifiedly if earned, but was not cumulative.
4. The payment of interest was not dependent upon anyone's discretion.
5. The right of the debenture holders to the interest was on a parity with the rights of other creditors and not subordinate thereto.
6. The holders of the debentures, as such, had no voice in the management.
7. The stockholders did not hold the debentures in a uniform proportion to their stock.
8. The stocks and bonds were widely distributed.
9. The change from stock to debentures had business purpose other than the saving of taxes.
10. General creditors were not to take precedence over the bondholders and, if the corporation decided to mortgage the property, it was required to set aside an equal amount in value of its property to secure these debentures.

In addition to the foregoing considerations, the court also weighed the fact that the corporation received no money upon the issuance of the debentures (they had been issued in exchange for preferred stock in a reorganization). Still other factors determined by the court in this case have been set forth above under the caption "Tax Minimization."

Conclusion

The foregoing presentation, it is submitted, clearly indicates that there are certain definite advantages to be derived from the financing of a corporation by way of debt rather than stock.

National Planning for Israel

Member Samuel H. Holland addressed recently, at the Covenant Club, our Board of Managers and guests on his trip to Washington where he attended the National Planning Conference for Israel and Jewish Rehabilitation. The meeting, reported Holland, was attended by forty-four National Jewish organizations in the United States and twelve hundred delegates from about five hundred Jewish communities. A Four Point Program was adopted to help Israel weather its current economic crisis. These were: urging our government to help Israel through grants-in-aid by loans and other financial support; intensification of help to the United Jewish Appeal; cooperation with The Israel Government in its efforts to float a public loan in the form of bonds to be sold in the United States, and, four, encouragement of American investors to participate in Israel business and industrial enterprises as private investors.

Long active in the legal profession and in Jewish communal activities, Holland is a director of the Jewish National Fund of Chicago, and The Joint Distribution Committee.

However, the decided cases have left much to be desired in clearly defining what will and what will not be construed to be a loan as contradistinguished from a stock purchase. Nevertheless, they have enunciated certain criteria which should materially assist counsel in ascertaining his position relative to the line of demarcation. Should his recommendation move the investment into the realm of stock, the results will not be too disastrous, since the corporation, in having the interest deduction denied and treated as a dividend, is in no worse position than if the stock had been issued in the first instance. While this is true as to the payments of interest, a word of caution must be injected as to principal payments. If the debt is considered as stock, in this situation, the investor may find himself thrown into an unusually high bracket because the principal prepayments are treated as dividends. In conclusion, the writer would be derelict if, at this juncture, he did not issue a caveat to tread very lightly in this field of finance.

NEW APPLICATIONS

H. BURTON SCHATZ, Chairman

APPLICANTS	SPONSORS
Harry A. Goldsmith	Michael Levin
Melvin A. Heller	Samuel Allen
Eugene D. Kaine	Irving Surie
Samuel Kassel	Archie H. Cohen
Sherwin I. Levinson	A. S. Frankenstein
Seymour Scheffres	Samuel Allen
Myra Siegel	Michael Levin

ELECTED TO MEMBERSHIP

Sheldon L. Glieberman	Norman S. Rosen
Philip H. Goodman	David Siegel
Maurice Greiman	Sam Silver
Samuel W. Kipnis	Irving Surie
Bernard W. Mages	Daniel D. Tucker
Donald N. Mann	Samuel Tucker
Norman Naiman	Leonard Weinstein

Subversive Bills

(Continued from page 1)

H. B. 93, would amend the provisions of the school code relating to textbooks. The proposal sets up some very vague criteria by which an "Evaluating Committee" could determine whether "teaching materials" are "constructive, friendly to democracy and non-subversive," and an involved machinery is set up ostensibly to secure fair and effective operation. This bill asks the Legislature to impose book and press censorship contrary to America's and Illinois' great tradition of freedom of expression. We believe that the Legislature should not accept a bill that would take away from the local school administrations and boards the power that has always been theirs of determining the textbooks to be used in their schools.

The third bill, H. B. 98, like Senate (Broyles) Bill 35, would amend the School Code by providing for the dismissal of a teacher for "advocating in his teaching any doctrine to undermine the form of government of this State or of the United States by force or violence." Such advocacy is already made a crime in Illinois by Ill. Rev. Stats. 1949 (Ch. 38, Sec. 558). Any teacher convicted of any crime can already be removed on that ground. There-

fore, the only purpose of the bill would seem to be to put teachers in greater jeopardy of accusations against their loyalty than other persons. The bill sets out no adequate standards for finding a teacher "guilty," but nevertheless exposes the character of every teacher to the possibility of unjustified attack. We believe teachers, like all other citizens, should be given the right of fair trial in accordance with law, when their loyalty to their country and state is questioned.

The fourth bill, H. B. 96, parallel to the Broyles Senate Bill 36, seeks to reestablish the State Sedition Activities Investigation Commission. We believe the report and published activities of the previous commission show conclusively that it served no useful purpose, and succeeded only in giving some adverse publicity to persons and organizations of high character. We recognize that the Legislature has the power and duty to maintain order in our State, and to keep itself informed for that purpose. But we believe that the proposed Commission would necessarily fail both in adding to the Legislature's knowledge and in aiding our security. The State and Federal Government have trained men whose duty it is to investigate and apprehend criminals and disloyal persons. Such agencies can supply any information needed, just as the matters reported by the old Broyles Commission had already been easily obtainable from the files of existing governmental agencies.

For the above stated reasons, The Decalogue Society of Lawyers asks the members of the General Assembly to disapprove House Bills 92, 93, 96 and 98, and Senate Bills 33, 34, 35, 36 and S.B. 102.

* * *

**From the Honorable Sherwood Dixon,
Lieutenant Governor, State of Illinois.**

To The Decalogue Society of Lawyers:

This acknowledges your letter of March 19, with enclosure, stating the position of your Society on Senate Bill 102.

I am in entire accord with your views on this subject.

Yours truly,
SHERWOOD DIXON

Jurisdiction of City Courts in Illinois and of Municipal Court of Chicago

Digest of an address on recent court decisions delivered by Harry G. Fins before The Decalogue Society of Lawyers.

It is now finally settled that both city courts in Illinois and the Municipal Court of Chicago have jurisdiction over appropriate cases where service of process can be had upon the defendant within their respective city limits, regardless of where the cause of action occurred.

Turnbaugh vs. Dunlop 406 Ill. 573 (9/21/50) for city courts

United Biscuit Co. vs. Voss Truck Lines, 407 Ill. 488 (11/27/50) for Municipal Court of Chicago

(At the time of his address the latter case had not yet been decided, but Fins correctly predicted its outcome on the basis of the former and the background of the earlier decisions on this question)

As to the City Courts, Sec. 1, Art. VI of the Illinois Constitution of 1870 provides, among others, for "such courts as may be created by law in and for cities and incorporated towns. Prior to 1943, the statute gave jurisdiction to City Courts in cases "arising in said city," concurrent with Circuit Courts. It was held that if the acts complained of did not occur within the city limits its city court did not have jurisdiction even though summons was served on the defendant within the city, and any judgment in such a case was void.

Werner vs. Illinois Central Rail Road Co. 379 Ill. 559 (1942)

Mitchell vs. L & N RR Co. 379 Ill. 522
Herb vs. Pitcairn 384 Ill. 273

Belcher vs. L & N RR Co. 384 Ill. 281
Smith vs. L & N RR Co. 381 Ill. 55

(Federal Employers Liability Cases)
McFarlin vs. McFarlin 384 Ill. 428
(Divorce)

Riddlebarger vs. Riddlebarger 324 Ill. App. 176 (1944) (divorce) held subject to collateral attack

But in 1943 the City Court Act was amended,

giving city courts general jurisdiction "in and for cities" and eliminating the words from the prior act "arising in said city." Whereupon in 1947 it was held in Govan vs. Govan, 331 Ill. App. 372, that in view of the above amendment, a divorce granted by the city court of Chicago Heights was valid though the cause of action was based on acts committed in the City of Chicago.

As to the jurisdiction of the Municipal Court of Chicago, pursuant to Sec. 34, Art. IV of the Illinois Constitution, ratified in 1904, the Legislature provided in the Municipal Court Act of 1905, (Sec. 1) for a Municipal court "in and for the city" of Chicago.

In spite of the decision in the Govan case, it was held in the case of United Biscuit Co. vs. Voss Truck Lines 340 Ill. App. 503 (1950) that the Municipal Court of Chicago had no jurisdiction of the case though the defendant was properly served in Chicago, even though the collision had occurred outside the city. While the appeal was pending in the Supreme Court of Illinois that Court decided the Turnbaugh case. In view of that decision and the Govan case, Fins believed the decision of the Appellate Court in the United Biscuit case would be reversed. As already noted the Supreme Court so held.

Editor

The Decalogue Tax Institute

(Continued from page 2)

Annes was the treatment of "collapsible corporations" under the new Section 117 (m) of the Act. He closed the lecture with a brief statement about the new provisions concerning "Short Sales."

Abbell took up all the remaining principal provisions of the new Act. He covered the changes with respect to the net operating loss provision under Section 122 (b) of the Code; the renewal of the provision with respect to amortization of emergency facilities on a five year basis (in promotion of the current defense effort); the extension for another year of the provision concerning the discharge of a corporation's indebtedness under Section 22(b) (9) and (10).

Abbell devoted the rest of his address to a full discussion of the Act with respect to edu-

cational, charitable and other tax exempt organizations, foundations, and trusts. Particular attention was given to the type of business income of such "charitable" organizations made taxable by the new law, and the limitations, exclusions, and exceptions to its application. Special analysis was made of the "lease back" income provision under the Act relating to "charitable organizations." And, finally, Abbell explained the "prohibited transactions" which may cause such "charitable organizations" to lose their right to the deduction for charitable contributions.

Benjamin M. Becker, the first speaker of the afternoon session, discussed the Excess Profits Tax Act of 1950. He first reviewed the background of The World War II Excess Profits Tax law, and the history and implications of the many important changes in the present Act. He pointed out that a 62% ceiling rate on the combined normal and surtax and excess profits tax, plus an increase in the minimum credit to \$25,000, as well as broader relief provisions, make the new Act more liberal. This was followed by a full presentation of the alternative methods of computing the excess profits tax.

Becker considered of significant importance the new approach of the relief provisions in the present law. Under the former law, it was explained, an extremely complex hypothetical reconstruction based on numerous factors was required, and lengthy consideration of each application for relief was necessitated, with consequent delays and disparity of treatment among taxpayers. The present Act contains precise formulae for application in each situation where relief is granted, so that a corporation qualifying for relief may readily determine its excess profits tax by use of the appropriate formula.

The lecturer presented a detailed analysis of the relief provisions for "growth" and for "new" corporations, as well as for other abnormal situations qualifying a corporation for relief. He concluded with a review of the many factors to be considered in minimizing the excess profits tax, illustrating the need for an intimate knowledge of the numerous factors involved in this branch of federal taxation.

Joseph M. Solon delivered the concluding

lecture of the afternoon. He first dealt with the subject of "Marital Deductions" in estate planning, emphasizing the importance and indicating the extent to which proper use of the law may serve to minimize the impact of estate taxes. He also showed examples of how improper use of this device may be very costly to an estate.

The major and final portion of Solon's discussion dealt with the subject of tax evasion. He discussed the various methods of approach which the Government follows in determining whether or not a tax return properly reflects the income of the taxpayer, and similarly, the requirements necessary to establish "bank deposit," "expenditure" and "net worth" cases, and the circumstantial evidence which the government considers in determining a taxpayer's true income. He also outlined the requirements which the government must meet before it can resort to a "net worth" or "expenditure" case, and the underlying principles of law applicable to criminal prosecutions for tax evasion.

MEA CULPA DEPARTMENT

(Blame the printer and the editor too. . . .)

An unfortunate error crept into Mr. Everett Lewy's provocative article "Drumhead Justice in Capital Cases?" published in the February-March issue of our Journal. As printed, a statement in the article read:

" . . . In 1929 the legislature established this anachronistic hang-over from earlier days."

It should have read:

" . . . In 1929 the legislature abolished this anachronistic hang-over from earlier days."

Sorry. Mea Culpa.

—Editor

VITAL STATISTICS

Contrary to the report published in our last issue Harry G. Fins one of the recipients of our inter-organization certificates for 1950, is not sixty one years of age. Harry was born in 1904. Mea Culpa. . . .

BOOK REVIEWS

Pilgrim People, by Anita Libman Lebeson. Harper & Brothers. 624 pp. \$6.00.

Reviewed by BENJAMIN WEINTROUB

The emergence of the State of Israel having become an accomplished fact, the Jews of the United States who have helped on a gigantic scale in the establishment of the new nation will doubtless be called upon for some time to come to succor its builders. No other source wherfrom to draw relief and assistance is in sight. No Israelite need, I believe, feel reluctant or unsure about expecting solidarity or sympathy from fellow Jews anywhere. Particularly from those in America. But for the grace of God and the free institutions of the United States the position of the petitioner and the donor would have been reversed. This finding, among others, may be drawn from Mrs. Lebeson's work, *Pilgrim People*.

It may still come to pass that from quarters yet unnamed the miasmal breath of anti-Semitism will compel swift measures for the rescue of the remaining Jewry in Europe. While it will be—as it must be—the task of all humanity to prevent a repetition of a Hitler holocaust it will be nonetheless the American Jews who will have to spearhead the drive to minister to the beaten and the broken, the famished, and the desperate. The Americans. Jews. Now five million of them. For the *Pilgrim People* is but the continuing story of a folk whose history is comparable to no other saga and whose is the sorry distinction of possessing it. Where others, elsewhere, sought and often gained the right for civilized existence, the Jew fought for sheer survival. Until he reached the United States.

And here too the beginnings were unbearably hard, the road to recognition grim and tortuous and not too infrequently there marched alongside of the early settlers the spectral forms of prejudice and hatred, of repression and of persecution. And some of the hideousness of the intolerance of yesteryear persists in our very day . . . And that from the day in 1621 when Elias Legardo came to Virginia and Jacob Barsimson settled in New Amsterdam; from 1658 when the first fifteen Jewish families arrived in Newport from Holland. Persecuted Jews, all, who came to the American colonies from the West Indies, and from Europe, in search of a haven, to earn a livelihood and the right to practice their religion.

The Jews built synagogues that served also

as their first meeting places and they taught their children to respect their spiritual heritage. Until the Revolutionary War, until the powerful pen of Thomas Jefferson brought forth the Declaration of Independence, and subsequently made his own state, Virginia, a battleground for religious freedom the Jew fared badly in quest of equality. As a matter of fact, some of the Eastern and Southern states contained clauses in their constitutions disqualifying Jews from public office until as late as 1876; New Hampshire and North Carolina, for instance.

The Jew shirked no responsibility in identifying himself with the struggles of his new land. Small in number—there were but four thousand Jews in the United States during the War for Independence and only sixty thousand at the time of the Civil War—the Jew bled and died on the battlefields and gave all or most of his substance to help achieve victory. Mrs. Lebeson cites impressive records of the contributions and the sacrifices of a people who loved their country and proved their devotion at supreme cost. Washington and Jefferson, Benjamin Franklin, and Lincoln, John Charles Fremont and Andrew Jackson, Woodrow Wilson, Theodore and Franklin Roosevelt, testified to their courage and integrity of purpose.

The Jew was ubiquitous and indefatigable in his loyalty to his land. The author's canvas is tremendous. She writes in minute detail of the spirit of a whole people and of individual exploits. She expatiates upon mass movements. There are chapters which deal with the Jews as journalists, lawyers, soldiers, business men, and theologians. She traces the story of the early schism in the structure of Jewish institutional religion in the United States and the first organized Zionist activities on American soil. Visionaries and dreamers, men of wealth, the teeming thousands in the slums of big cities parade through her pages; the story of New York's East Side and what it was like when millions of Jews came rushing to America in 1881 and later to escape Russian slaughter. She writes of the men and women who influenced these eager, early settlers, and helped harness their energies for a respected place among fellow Americans. She tells of Samuel Gompers and of Sidney Hillman, of Benjamin Cardozo and of Louis Brandeis, of David Dubinsky and Felix Frankfurter, of Isaac Mayer Wise, and Stephen Wise, of Bernard Baruch and Adolph Ochs. And of women . . . Rebecca Gratz and Emma Lazarus, Lillian Wald and Henrietta Szold and . . . others. Each a humanitarian, an American and a Jew who sought by example and precept to contribute intelligently and generously to the sum total of human happiness.

Pilgrim People, is rich in content, large in

scope and though in places over lavish in detail is extraordinarily easy to read. It is written by a scholar, who, though absorbed with her subject yet maintains the objectiveness of a trained historian. It should be read to understand the American Jew. To know why his love for this land may never be questioned or impeached. Anita Libman Lebeson in her *Pilgrim People* had made all that clear, and more.

Melville Weston Fuller, by Willard L. King, Macmillan Publishing Co. 394 pp. \$5.00.

Reviewed by EVERETT LEWY

History has not vindicated the vision of Chief Justice Melville Weston Fuller. Forty years after his death we find that most of his important decisions and one of his best known dissents have been repudiated. In *Pollack v. Farmer's Loan & Trust Co.* (157 US 429; and on rehearing 158 US 601 (1895)) Fuller held with the majority that the Federal Income Tax Law was unconstitutional. In *U. S. v. Wong Kim Ark* (169 US 649 (1898)) Fuller dissented from the opinion which held that a United States born child of a Chinese father ineligible for citizenship, was himself a citizen by birth under the Fourteenth Amendment. In *Lochner v. N. Y.* (198 US 45 (1905)), where Holmes wrote his famous dissenting opinion, Fuller was part of the majority which struck down the New York 10 hour day law for bakers as violative of the Fourteenth Amendment. Yet Fuller was a great American and his contributions to the development of

our constitution were considerable. He was conservative by present standards, at least, but he was a competent lawyer and in spite of his conservatism, he had a real sympathy for the common man. He was Chief Justice from 1888 when President Cleveland appointed him to the Supreme Court until his death in 1910. This was the period that the United States, without knowing it, became a world power. Fuller showed that intelligent conservatism makes its contribution towards sound progress —something which cannot be said of stupid reaction.

After a slow start, King's biography of Melville Weston Fuller becomes a gripping and scholarly work. With one exception, all the important cases of the twenty-two year period Fuller sat on the bench are carefully and completely analysed, not only from the legal point of view, but against a background of their social and historical significance. It is regrettable that the author did not mention the case of *Plessy v. Ferguson* (163 US 537 (1895)) where Fuller was part of the majority which upheld a Louisiana Statute requiring railroads to furnish "separate but equal" facilities for white and negro passengers. The long period of deterioration in solving racial problems that continued into World War II really started with this case.

King's style is clear and simple and his book a delight to read. It is recommended reading for any one interested in the development of American institutions and ideas—for lawyers it is a must.

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The Argument Phase of Taxpayer Politics

Condensed by Paul G. Annes from an article by Roy Blough in the Summer 1950 issue of The University of Chicago Law Review.

Federal tax policy is developed out of the conflict of interest among different economic groups. These different interests, many of them well organized, appear before members of Congress, often with paid lobbyists, pressing for the proposals favorable to their respective groups. Of course, they are submitted allegedly in the public interest. The arguments presented before the House Ways and Means Committee and the Senate Finance Committee fall roughly into the following groups:

The proposal will:

- 1) Increase (decrease) revenue.
- 2) Enlarge (diminish) tax fairness.
- 3) Promote (destroy) a high and stable level of production and employment.
- 4) Encourage (discourage) an important industry or business group.
- 5) Repress (promote) socially desirable consumption.
- 6) Improve (make worse) the distribution of wealth and income.
- 7) Be—can be—(cannot be) administered in a complete and uniform manner.
- 8) Simplify (complicate) the compliance problems of taxpayers.
- 9) Increase (decrease) a "wholesome" tax consciousness.
- 10) Enlarge (contract) the rights and financial independence of the States.

Quite apart from the Committee members' own preconceptions and biases, how do they

evaluate these arguments? Here are some of the tests, varying in importance and usefulness:

- 1) Completeness of presentation of all sides of the proposal.
- 2) Accuracy of factual presentation.
- 3) Validity of arguments themselves—largely questions of economic theory.
- 4) Relevancy of Argument.
- 5) Importance of objectives sought.
- 6) Sincerity of witness.
- 7) Prestige of witness and group he represents.

Granted the good intentions of the law maker, determination of tax policy involves much knowledge and understanding, much of it to be acquired only after many years of study. Necessarily, reliance must be had on tax experts. Here again the choice of the experts becomes of great bearing on ultimate tax policy.

But even more important is the pattern of values of the individual policy maker. This "largely determines the impact which tax arguments make on him and thus vitally influences the directions of tax policy growth." What about these patterns of values among our Congressmen and Senators? The article does not discuss this most important phase of the problem. One might also mention that tax laws, even more so than other legislation, are practically determined in Committee.

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Congressman Yates

Congressman Sidney R. Yates, Ninth Illinois Congressional District who was recently re-elected to a second term and, who is a former editor of this Journal, has written us regarding his early impressions of the 82nd Congress.

Congressman Yates reports that, at this writing, it appears that possible legislation dealing with the pending F.E.P.C. bill and the President's civil rights program awaits an unhappy fate.

This was caused by the disapproval by the House of Representatives of the, so called, 21 day rule which was binding on the powerful House Rules Committee in the former Congress. This rule permitted committee chairmen to bring to the floor bills approved by their committees which the Rules Committee had refused to clear for House action. A coalition of southern Democrats and Republicans restored to the House Rules Committee its former power to keep at its discretion such legislation that it wishes to prevent from reaching the House.

Editor.

DEMOCRACY

"Our democracy must prove itself effective in making the people healthy, strong and industrially productive, in securing justice, in inspiring intense patriotism, and in making every man and woman within our borders realize that if they are not willing to serve the nation in time of need against all comers in war, they are not fit to be citizens of that nation in time of peace."

—THEODORE ROOSEVELT

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Assistant Trust Officer

SORROW

The Decalogue Society of Lawyers announces with deep regret the death of the following members:

Meyer Abrams
Harry R. Chapman
William H. Kailes

EIGER WRITES

The February 1951 *Chicago Bar Record* carried an article by member Norman N. Eiger entitled "Unemployment Compensation Program Highlights."

Mr. Eiger is chairman of Illinois Department of Labor Board of Review.

REELECTED

Members Abraham H. Cohen of the Fourth, Benjamin M. Becker of the Fortieth and Allen A. Freeman of the Forty-eighth wards were re-elected to succeed themselves as aldermen.

KENNETH I. RUSS

Member Kenneth I. Russ has been named to the faculty of Lake Forest College, Lake Forest, Illinois, where he will teach Business Law.

... In our system, the individual finds security in his rights because he is entitled to the protection of tribunals that represent the capacity of the community for impartial judgment as free as possible from the passion of the moment and the demands of interest or prejudice. The ends of social justice are achieved through a process by which every step is examined in the light of the principles which are our inheritance as a free people.

SAMUEL HENDEL,
Charles Evans Hughes
and the Supreme Court

MICHAEL A. GOLDBERG

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This from the HONORABLE J. HOWARD McGRATH *Attorney General of the United States*

. . . You, the officers and members of The Decalogue Society of Lawyers, should be congratulated for your wisdom and fine sense of selection in making Dr. Julian the recipient of your coveted award. No man has given more outstanding service to the cause of humanity and no one has given more distinguished service to American democracy. As lawyers and as members of a group dedicated to the adherence of the fundamental principles of the American Constitution and the teaching of the Biblical Decalogue, you are aware that the career of your honored guest is a striking illustration of democracy in action. It is a refutation of the vicious lies of the Communistic propagandists. In spite of the hardships

and difficulties which must have confronted Dr. Julian because of his color and race, the democratic process did give life and meaning to the concepts of equality of opportunity which we are proclaiming to the world. . .

. . . I regret my inability to be present in person this evening to pay this deserving tribute to this distinguished and eminent American. I wish him and his family good health and good fortune. I know that the contributions still to come from his ingenious brain will be many and greater. May his life and his career be an inspiration to all to strive, to work, and to make democracy as we understand it, a universal way of life. . .

